

FILED**NOT FOR PUBLICATION**

JUL 09 2014

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:)	BAP No. WW-13-1391-JuKuPa
)	
GURPREET KAUR,)	Bk. No. 12-16490-MLB
)	
Debtor.)	Adv. No. 12-01872-MLB
)	
GURPREET KAUR,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M *
)	
PARDEEP RATHINAM; SHARMILA)	
RATHINAM; SATWANT SINGH;)	
DHALIWAL REAL ESTATE LLC,)	
)	
Appellees.)	
)	

Submitted Without Oral Argument
on June 26, 2014**

Filed - July 9, 2014

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Marc L. Barreca, Bankruptcy Judge, Presiding

Appearances: Masafumi Iwama, Esq., on brief for appellant
Gurpreet Kaur; John H. O'Rourke, Esq.
on brief for appellees Pardeep and Sharmila
Rathinam, Satwant Singh and Dhaliwal Real Estate
LLC.

* This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8013-1.

** On May 15, 2014, this Panel entered an order determining
that this appeal was suitable for submission without oral
argument.

1 Before: JURY, KURTZ, and PAPPAS, Bankruptcy Judges.

2 Chapter 11¹ debtor Gurpreet Kaur owned real property in
3 Kent County, Washington comprised of two tax parcels (Property).
4 Debtor's home was on one acre designated as Parcel A and the
5 contiguous four acres were designated as Parcel B. Debtor
6 claimed a homestead exemption on Parcels A and B and filed an
7 adversary proceeding² seeking to avoid the judgment lien of
8 Pardeep and Sharmila Rathinam (Rathinams), Satwant Singh
9 (Satwant) and Dhaliwal Real Estate, LLC (Dhaliwal)
10 (collectively, Appellees) pursuant to § 522(f). Debtor then
11 moved for summary judgment. In response, Appellees argued,
12 among other things, that Parcel B was not reasonably necessary
13 for the use and occupancy of debtor's homestead under John
14 Hancock Mut. Life Ins. Co. v. Wagner, 174 Wash. 185, 24 P.2d 420
15 (Wash. 1933).

16 Debtor later discovered that Appellees had not recorded
17 their judgment. Therefore, under Washington law, no lien
18 attached to her Property. Further, her personal liability on
19 the debt had been discharged in a previous chapter 7 case.
20 Debtor moved to dismiss the adversary proceeding, which the
21 bankruptcy court denied for reasons not apparent from the
22 _____

23 ¹ Unless otherwise indicated, all chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532 and
Rule references are to the Federal Rules of Bankruptcy Procedure.

25 ² Rule 4003(d) provides that a proceeding by the debtor to
26 avoid a lien under § 522(f) shall be by motion in accordance with
27 Rule 9014. Appellees did not object to debtor proceeding by
28 adversary complaint rather than by motion. Regardless, no due
process issues are triggered, since the adversary accords more
due process than a motion.

1 record.

2 Thereafter, the court held a trial to determine whether
3 debtor was entitled to claim Parcel B as part of her homestead
4 exemption. Without addressing the lien perfection issue, the
5 bankruptcy court issued its findings of fact and conclusions of
6 law, finding that debtor was entitled to claim Parcel A as
7 exempt, but that Parcel B was not reasonably necessary for the
8 use and enjoyment of her home as a dwelling under the holding in
9 Hancock. The court entered judgment in favor of debtor with
10 respect to Parcel A and in favor of Appellees with respect to
11 Parcel B. This appeal followed. For the reasons discussed
12 below, we VACATE the judgment of the bankruptcy court and REMAND
13 this matter with instructions that the bankruptcy court dismiss
14 this adversary proceeding.

15 **I. FACTS³**

16 **A. The Purchase And Sale Agreement**

17 In November 2006, Dhaliwal, through its managing member,
18 Satwant, offered to purchase the Property from the then-owner,
19 Harbhajan Singh (Harbhajan). Harbhajan agreed to sell the
20 Property for \$1,615,000 and, as part of the agreement, Dhaliwal
21 was required to pay a \$200,000 earnest money deposit which would
22 be applied to the purchase price. An addendum to the agreement
23 stated that the earnest money deposit would become nonrefundable
24 after a certain date. According to the agreement, the closing
25

26 ³ We take judicial notice of various pleadings and documents
27 in this case and the adversary proceeding because the record on
28 appeal is incomplete. See Atwood v. Chase Manhattan Mortg. Co.
(In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 would occur in August 2007 and was conditioned on two
2 contingencies: (1) the land had to be subdivisible and (2) the
3 subdivision had to yield at least seventeen lots.

4 Because Harbhajan could not speak English, Satwant helped
5 prepare the subdivision plan and preliminary approval was
6 granted by the City of Kent. During the development process,
7 the Rathinams became parties to the purchase and sale agreement
8 through an assignment by Dhaliwal. In connection with the
9 purchase and sale, Appellees made a downpayment of \$500,000,
10 \$200,000 of which was the earnest money deposit. It is unclear
11 from the record whether the Rathinams paid the entire amount.
12 Ultimately, the transaction did not close and none of the money
13 was refunded.

14 **B. The State Court Lawsuits And Transfer Of The Property**

15 Appellees commenced a lawsuit against Harbhajan in the King
16 County Superior Court seeking the return of their \$500,000
17 downpayment. They obtained a judgment against him by default in
18 the amount of \$501,735.

19 In late October 2008, debtor purchased the Property from
20 Harbhajan. In connection with the purchase, debtor obtained a
21 loan from Provident Funding Associates, LP (Provident) in the
22 amount of \$417,000 which is evidenced by a promissory note
23 secured by a first deed of trust against the Property (both
24 Parcels A and B). Debtor has been living on the Property since
25 August 2004 with her extended family members, including
26 Harbhajan, who is debtor's father.

27 After learning about the transfer of the Property,
28 Appellees commenced an action against Harbhajan, his wife, and

1 debtor in the King County Superior Court, seeking to avoid the
2 alleged fraudulent transfer of the Property from Harbhajan to
3 debtor and alleging that debtor had received \$200,000 of the
4 \$500,000 downpayment (Case No. 09-2-15396-5KNT). In April 2010,
5 Appellees obtained a judgment by default against debtor in the
6 amount of \$200,000 and the superior court avoided the transfer
7 of the Property (the April 2010 Judgment).

8 **C. Debtor's Chapter 7 And Chapter 13 Cases**

9 Shortly after, on September 21, 2010, debtor filed a
10 chapter 7 petition (Case No. 10-21208-MLB). In Schedule A,
11 debtor valued the Property at \$350,000 and identified it as her
12 residence. Debtor listed the Rathinams as secured creditors
13 against the Property. In Schedule C, she claimed the federal
14 homestead exemption. Debtor obtained her discharge on
15 January 19, 2011.

16 Prior to her discharge, on January 9, 2011, debtor filed a
17 chapter 13 case, this time claiming state exemptions in
18 Schedule C. That case was dismissed for failure to make plan
19 payments.

20 In January 2012, upon Appellees' motion, the bankruptcy
21 court reopened debtor's chapter 7 case so that they could file
22 an adversary proceeding seeking to revoke debtor's discharge
23 under § 727(d)(1) and (2). Upon debtor's motion, the bankruptcy
24 court granted partial relief in her favor, dismissing the
25 § 727(d)(2) claim entirely and dismissing Satwant and Dhaliwal
26 as parties to the § 727(d)(1) claim. After a trial on the
27 § 727(d)(1) claim, the bankruptcy court denied revocation and
28 upheld debtor's discharge order in its findings of fact and

1 conclusions of law entered on August 7, 2012. With her § 727
2 discharge intact, debtor's personal liability on the debt owed
3 to Appellees was discharged.

4 **D. Debtor's Chapter 11 Case**

5 Meanwhile, Provident commenced foreclosure proceedings
6 against the Property. Debtor filed a chapter 11 case on
7 June 21, 2012, to stop the proceedings. In Schedule A, debtor
8 valued the Property at \$408,000. She characterized Parcel B as
9 wetlands having no value and she indicated the Property was
10 encumbered by approximately \$501,000 of secured claims. She
11 again listed the Rathinams as secured creditors against the
12 Property. In Schedule C, she claimed the federal homestead
13 exemption.

14 On October 4, 2012, debtor filed an adversary proceeding
15 seeking to avoid Appellees' judgment lien arising out of the
16 April 2010 Judgment. Debtor maintained that the lien impaired
17 her homestead exemption within the meaning of § 522(f).

18 Debtor then filed a motion for summary judgment (MSJ) on
19 the lien avoidance issue, which the bankruptcy court denied on
20 February 4, 2013. In opposition to the MSJ, Appellees argued
21 that Parcel B, which was vacant land, was not necessary for the
22 use and occupancy of debtor's homestead under Hancock.

23 On January 15, 2013, debtor filed amended Schedules A and
24 C. In Schedule A, she valued the Property at \$600,000. She
25 again characterized Parcel B as wetlands having no value and she
26 again indicated the Property was encumbered by approximately
27 \$501,000 in secured claims. In Amended Schedule C, she claimed
28 the state law homestead exemption.

1 Debtor later discovered that Appellees had never recorded
2 the judgment at the King County Recorder's Office. On
3 February 11, 2013, debtor moved to dismiss the adversary
4 proceeding on the grounds that the judgment did not attach to
5 her homestead under Wash. Rev. Code (RCW) 6.13.090⁴ and thus
6 there was no controversy for the court to decide. The
7 bankruptcy court denied her motion by order entered on March 28,
8 2013, for reasons not apparent from the record.⁵

9 On May 6, 2013, the bankruptcy court held a trial to
10 determine the exact portion of debtor's property covered by the
11 homestead exemption. At the commencement of trial, the court
12 observed that it was the lien claimant's burden to show that
13 they actually had a lien. The court later stated:

14 I can't read [RCW] 6.13.090 as anything other than
15 saying, if you don't record the judgment, you don't
16 have a lien against real property, even if it's in the
17 county where the judgment was taken. That's just how
18 [RCW] 6.13.090 works. That's always been my
19 understanding of it. I didn't see any case law cited
20 to me that may be in the exception for that. I think
21 the thing that is missing in the defendants' analysis
22 on that is the discharge injunction stays from you now
23 recording it. So if it wasn't recorded and I do
24 determine that both parcels are homestead, then as I

20 ⁴ RCW 6.13.090 states in relevant part:

21
22 A judgment against the owner of a homestead shall
23 become a lien on the value of the homestead property in
24 excess of the homestead exemption from the time the
25 judgment creditor records the judgment with the
recording officer of the county where the property is
located. . . ."

26 ⁵ There is no transcript of the hearing on the motion to
27 dismiss in the record or on the docket and the order denying
28 debtor's motion does not contain findings of fact or conclusions
of law. Therefore, we are unable to discern the precise basis
for the bankruptcy court's decision to deny debtor's motion.

1 see it, there's just no lien there, and I could enter
2 a judgment declaring that there is no lien against
3 that property, and then your client's precluded --
4 because I already determined the debt's dischargeable,
5 you'd be precluded from then recording the judgment
6 lien because of the discharge injunction.

7 Without further discussion or argument on the lien perfection
8 issue, the matter proceeded to trial on whether Parcel B was
9 included in debtor's homestead.

10 During the trial, debtor testified that she and her family
11 utilized the entire property for their residence. Her driveway
12 begins at the west boundary of Parcel B and ends at the
13 northeast corner of Parcel A. The driveway is the only
14 practical means of access to her residence. There are two
15 appurtenant buildings located on Parcel B, one of which is
16 served by an electric power line attached to the residence.
17 This structure is used as a storage shed. The other structure
18 is a goat house where debtor keeps her two goats. She keeps a
19 garden and maintains fruit trees on the portion of her property
20 designated as Parcel B. Parcel B also includes a wetland where
21 debtor and her family pick berries and where her children often
22 play. She parks her commercial vehicles on Parcel B, which
23 affords her additional recreational area for her family.

24 The bankruptcy court issued its ruling on June 6, 2013,
25 where it found in debtor's favor as to Parcel A. However,
26 relying on the Washington Supreme Court's Hancock decision, the
27 court found that the homestead exemption did not cover Parcel B
28 because it was not reasonably necessary for debtor's use and
29 enjoyment of her home as a dwelling. The court found that
30 although debtor used Parcel B for storage, for gardens, to house

1 her two goats and as a recreation area for children and pets,
2 those uses did not make Parcel B reasonably necessary for the
3 use of the dwelling as her home. The court further opined that
4 debtor could relocate those activities to Parcel A because
5 Parcel A was sufficient in size to accommodate those activities.

6 On July 31, 2013, the bankruptcy court entered the judgment
7 which states, among other things: "Defendants are also granted
8 judgment in their favor as to continued attachment of the stated
9 judgment lien as to Parcel B because Plaintiff has no exemption
10 in Parcel B" Debtor timely appealed from this portion
11 of the judgment.

12 II. JURISDICTION

13 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
14 §§ 1334 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C.
15 § 158.

16 III. ISSUE

17 Whether the bankruptcy court erred by holding a trial on
18 the scope of debtor's homestead exemption when there was no case
19 or controversy before it.

20 IV. STANDARD OF REVIEW

21 Whether the case or controversy requirement has been met is
22 a question of law. We review questions of law de novo. Bias v.
23 Moynihan, 508 F.3d 1212, 1223 (9th Cir. 2007).

24 V. DISCUSSION

25 The bankruptcy court as a unit of the Article III district
26 court is a court of limited jurisdiction and is bound by the
27 requirement that, as a preliminary matter, it have before it an
28 actual case or controversy. City of L.A. v. Lyons, 461 U.S. 95,

1 101 (1983); see also Day v. Klingler (In re Klingler), 301 B.R.
2 519, 522-23 (Bankr. N.D. Ill. 2003) ("The limits Article III
3 imposes on federal jurisdiction apply equally to bankruptcy
4 courts."). If the bankruptcy court does not have an actual case
5 or controversy before it, it has no power to hear the matter in
6 question. In re Klinger, 301 B.R. at 523. The
7 case-or-controversy requirement subsists through all stages of
8 federal judicial proceedings, which means that the parties must
9 continue to have a personal stake in the outcome of the lawsuit.
10 Steffel v. Thompson, 415 U.S. 452, 459 n.10 (1974).

11 The requirement that a claimant have "standing is an
12 essential and unchanging part of the case-or-controversy
13 requirement of Article III." See Lujan v. Defenders of
14 Wildlife, 504 U.S. 555, 560 (1992). To qualify for standing, a
15 claimant must present an injury that is concrete,
16 particularized, and actual or imminent; fairly traceable to the
17 defendant's challenged behavior; and likely to be redressed by a
18 favorable ruling. Id. at 560-61. "We are obliged to examine
19 standing sua sponte where standing has erroneously been assumed
20 below." Adarand Constructors, Inc. v. Mineta, 534 U.S. 103, 110
21 (2001) (per curiam) (citing Steel Co. v. Citizens for a Better
22 Environment, 523 U.S. 83, 95 (1998)). In Steel Co., the United
23 States Supreme Court went on to say: "[When the lower federal
24 court] lack[s] jurisdiction, we have jurisdiction on appeal, not
25 of the merits but merely for the purpose of correcting the error
26 of the lower court in entertaining the suit.'" 523 U.S. at 95.

27 Here, the case or controversy requirement was not met when
28 debtor filed her adversary complaint. Instead, the parties and

1 the bankruptcy court proceeded under the false assumption that
2 Appellees had recorded their judgment and thus there was a
3 judicial lien against debtor's Property subject to avoidance
4 under § 522(f). However, in the context of her motion to
5 dismiss, debtor showed that Appellees' judgment lien never
6 attached to her Property because they failed to record it. See
7 RCW 6.13.090; Mehl v. Roberts (In re Deal), 933 P.2d 1084,
8 1086-87 (Wash. Ct. App. 1997) (judgment creditor who wishes his
9 or her judgment to attach to the value of a homestead in excess
10 of the homestead exemption need only record the judgment under
11 RCW 6.13.090). Because the judgment lien did not attach to
12 debtor's Property, there was no lien to avoid. Consequently,
13 debtor had no injury in fact. It follows that the adversary
14 proceeding could give her no more than what she already had – a
15 homestead exemption that was not impaired by Appellees' judicial
16 lien. See Cetacean Cmty. v. Bush, 386 F.3d 1169, 1174 (9th Cir.
17 2004) ("A suit brought by a plaintiff without Article III
18 standing is not a 'case or controversy,' and an Article III
19 federal court therefore lacks subject matter jurisdiction over
20 the suit").

21 Appellees fare no better. Because Appellees had not
22 recorded their judgment in conformance with Washington law,
23 their lien never attached to debtor's Property and thus they
24 were not secured creditors in debtor's chapter 11 case.
25 Further, because debtor's personal liability on the underlying
26 debt had already been discharged in her prior chapter 7 case,
27 they were not unsecured creditors in debtor's chapter 11 case.
28 As a result, they did not have standing to challenge the

1 validity of debtor's homestead exemption⁶ nor did they meet the
2 conditions under the broader constitutional standing test. See
3 Rule 4003(d) (stating that a "creditor" may object to a motion
4 filed under § 522(f) by challenging the validity of the
5 exemption asserted to be impaired by the lien); Lujan, 504 U.S.
6 at 560-61.

7 In sum, there was no dispute between the parties that could
8 support the case or controversy requirement. Since there was no
9 dispute, the bankruptcy court should have dismissed the
10 adversary proceeding, as it had no power to hear the matter.
11 The bankruptcy court compounded the error by granting judgment
12 in Appellees' favor "as to the continued attachment of the
13 judgment lien," even though Appellees never recorded their
14 judgment as required for attachment under Washington law.

15 VI. CONCLUSION

16 Accordingly, we VACATE the judgment of the bankruptcy court
17 and REMAND this matter with instructions that the bankruptcy
18 court dismiss this adversary proceeding.

21
22 ⁶ Here, Appellees raised the objection to the claim of
23 exemption as an affirmative defense to the § 522(f) avoidance.
24 Their need for standing is no different than if they had
25 affirmatively objected to the exemption under Rule 4004(b) which
26 states that a "party in interest" may file an objection to the
27 list of property claimed exempt. See Brown v. Sobczak
28 (In re Sobczak), 369 B.R. 512, 517-18 (9th Cir. BAP 2007) (a
"party in interest" is a party that has a pecuniary interest in
the matter or that has a practical stake in the resolution of the
matter). As they were neither secured nor unsecured creditors,
Appellees had no pecuniary interest or practical stake in the
outcome of a dispute over the validity of debtor's exemption.